

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

MICHAEL MACK

VS.

BURL CAIN, WARDEN

CIVIL ACTION NO. 07-0006

SECTION P

JUDGE JAMES

MAGISTRATE JUDGE HAYES

MEMORANDUM ORDER

Before the court is a petition for writ of *habeas corpus* (28 U.S.C. §2254) filed on or about January 3, 2007, by *pro se* petitioner Michael Mack. Petitioner is an inmate in the custody of Louisiana's Department of Public Safety and Corrections. He is incarcerated at the Louisiana State Penitentiary where he is serving consecutive sentences of life and 50 years imposed following his 2002 convictions for second degree murder and attempted second degree murder in the Third Judicial District Court, Lincoln Parish.

This matter has been referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. §636 and the standing orders of the court. On February 26, 2007, the undersigned authored a Report which recommended dismissal of petitioner's *habeas corpus* as time barred by the provisions of 28 U.S.C. §2244(d). [doc. 5] This recommendation was based on petitioner's assertion that he filed his first and only Application for Post-Conviction Relief in the Third Judicial District Court on November 8, 2005. [see doc. 1-1, paragraph 7] On March 8, 2007, petitioner filed a timely objection to the Report and Recommendation. Therein petitioner claimed (and provided documentary evidence to support

such claim) that his Application for Post-Conviction Relief was filed in the Third Judicial District Court in November 2004 and not November 2005 as originally claimed. It thus appears that the original analysis is flawed and therefore, the Report and Recommendation [doc. 5] is hereby **WITHDRAWN**.¹

THUS DONE AND SIGNED in Chambers at Monroe, Louisiana, this 2nd day of April, 2007.



KAREN L. HAYES
U. S. MAGISTRATE JUDGE

¹ A separate Memorandum Order directing petitioner to amend his petition to provide additional information will be prepared.